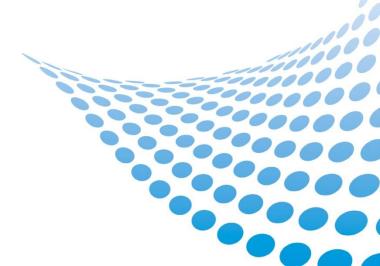
Monitoring & Enforcement



Presented by: Office of Civil Rights
National Airports External Program
June 2015

Office Of Civil Rights

ACHIEVING SAFETY THROUGH DIVERSITY



Agenda

- Regulatory Requirements Keturah Pristell
- Monitoring Requirements and Strategies for Implementation – Patricia Wright
- Self-Assessment Gene Roth & Thomas Knox

Learning Outcomes

- Identify monitoring & enforcement mechanisms to ensure that work committed to DBEs and ACDBEs at contract award is actually performed by those DBEs and ACDBEs
- Create a "running tally" of actual payments to DBE firms
- Identify enforcement provisions

REGULATORY REQUIREMENTS

Regulatory Requirements - DBE

49 CFR 26.37

- (a) Implement Appropriate Mechanisms to Ensure Compliance by ALL PROGRAM PARTICIPANTS
- (b) Ensure Work Committed to DBEs is Performed by DBEs
- (c) Written certification that you have reviewed contracting records
- (d) Keep a Running Tally of DBE Participation



Regulatory Requirements - DBE, cont'd.

DBE Contract Administration

Recipients' contracts must contain these provisions (26.13):

- 1. Non-discrimination
- 2. Prompt payment (26.29)

http://www.faa.gov/documentlibrary/media/advisory_circular/150_53 70_10F.pdf (released 9/30/2011 – see pages 52-54)

Regulatory Requirements - DBE, cont'd.

- 3. Retainage (26.29)
- 4. Enforcement provisions (26.105(a))

Regulatory Requirements - ACDBE

49 CFR 23.29

- (a) Implement Appropriate Mechanisms to Ensure Compliance by ALL PROGRAM PARTICIPANTS
- (b) Ensure Work Committed to ACDBEs is Performed by ACDBEs
- (c) Written certification that you have reviewed contracting records
- (d) Goals submittal (car rental & non-car rental)

Regulatory Requirements - ACDBE, cont'd.

ACDBE Nondiscrimination and Assurance §23.9

- Recipients' contracts must contain nondiscrimination provisions applicable to concession agreements, management contracts or subcontracts, purchase or lease agreements, or other agreements
- Assurances language required in all concession and management contracts



Regulatory Requirements - ACDBE, cont'd.

ACDBE Records and Reports

§23.27

- Program Implementation
- ACDBE Certifications
- Award and Performance of Agreements and Contracts

Data must be retained for a minimum of 3 years.

 Annual report of ACDBE participation using Appendix A form



MONITORING REQUIREMENTS

Monitoring Requirements - DBE

49 CFR 26.11(a)

Recipient must have, maintain, and/or transmit:

- Uniform Report of DBE Awards or Commitments and Payments
- Data about your DBE Program
- Bidders List (49 CFR 26.11)
 - ALL firms bidding or participating (primes and subs)
 - Name, address, age of firm, and annual gross receipts
 - Firms' DBE or non-DBE status
- Certification records (for certifying agencies)

Ensure DBEs' Performance of Contracts

26.37

- Written Certification of Contract Review
 - Contract Review Process
 - DBE Subcontract Review

Written Certification of Work-Site Monitoring

Monitoring Requirements - ACDBE

- Must implement mechanisms to ensure compliance with the Regulations
- ACDBE Program document must contain specific provisions to be inserted into concession agreements and management contracts outlining enforcement mechanisms
 - Written certification of contract, lease, JV, and other concession-related agreements have been reviewed

STRATEGIES FOR IMPLEMENTATION

Running Tally of DBE Participation

- Ensure Prime is Meeting DBE Commitment
- Track DBE Awards and Commitments

Track Payments Made to DBEs

Appropriate Compliance Mechanisms

- Examples of what you should consider creating policies and procedures for:
 - Certification (if you are a certifying agency)
 - Prompt payment
 - Bid document submittal
 - Good Faith Effort reviews (in a race-conscious program)
 - Liaison officer duties
 - Uniform Reporting
 - Etc.

Ensure DBEs' Performance on Contracts

Project Oversight is a Team Effort!

- Involve Project Inspectors and Project Engineers
- Create DBE Program Oversight as an Essential Job Function of Multiple Parties

ENFORCEMENT ACTIONS



Enforcement Actions

• 26.107

Enforcement Actions Against Contractors

- Involve the OIG
- Suspension/Debarment
 - DBE "front" or DBE that does no work
 - Ineligible firm fraudulently attempting to participate

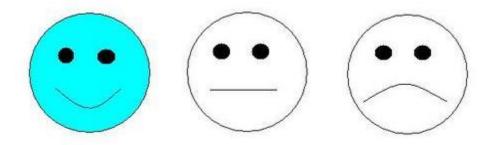
USDOT Monitoring and Enforcement

- Complaint Investigations
 - Specific Allegations of Non-compliance
- Compliance Reviews
 - Overall Assessment of DBE Program Implementation
- Enforcement Actions
 - Conciliation Agreement
 - Finding and Reporting of Significant Non-Compliance
 - Restrict Drawdowns
 - Ineligibility to Start, Continue, or Complete a DOTassisted Project

Self-Assessment

Discussion

How well are you monitoring and enforcing your DBE and/or ACDBE Program?



HANDOUTS

Commercially Useful Function:

http://www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf



Thank you!